

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GAN H. ENG, TAN F. LAM, KWOK C. TANG, JUN Q.
CHAN, KAM C. HO, XIAO Z. ZHANG, YAT C. CHAN,
MING HO, RONG J. CHEN, JIAN Z. LUO, LE Y. CHEN,
JIAN B. YAN, SU C. JIANG, XIU H. JIANG, XIU LIN,
TAK S. CHENG, SHU C. HUANG, MEI J. HUANG and
OY K. KWAN,

Plaintiffs,

-against-

THE NICE RESTAURANT, INC., BEN H. TOM, MEE
MEE TOM a.k.a. MEE MEE M. TOM a.k.a. MEE MEE
MEI, YAN SHING CHAN, CHEUNG YONG, SHING SI
SUN, SHEN PING CHU, JOHN TAM, SI KIT WU, SI
HUNG WU, CHUI BAI TAM, and JIMMY MOY a.k.a.
JIMMY MUI a.k.a. JIMMY MEI,

Defendants.

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07 CV 3909 (MGC)

ANSWER

(Filed electronically)

Defendant WILLIAM TAM, sued herein as CHUI BAI TAM (hereinafter “Defendant Tam”), by his attorneys, Keating & McHugh, for his answer to the Complaint, alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.
2. Denies the allegations contained in paragraphs 2, 3, 4, 5, 6 and 7 of the Complaint.
3. Admits the allegations contained in paragraphs 8, 9, and 10 of the Complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 11, 12, 13 and 14 of the Complaint.

5. Admits the allegations contained in paragraph 15 and 16 of the Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 17, 18, 19, 20, 21, 22, 23, 24, and 25 of the Complaint.

7. Denies the allegations contained in paragraph 26 of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint.

9. Denies the allegations contained in paragraph 28 of the Complaint as they relate to this answering defendant and denies knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to the other defendants.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 29, 30 and 31 of the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 32 and 33 of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint.

13. Denies the allegations contained in paragraphs 35 and 36 of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

15. Denies the allegations contained in paragraphs 38 and 39 of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint.

18. Denies the allegations contained in paragraph 42 of the Complaint as they relate to this answering defendant and denies knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to the other defendants.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint.

20. Denies the allegations contained in paragraphs 44, 45, 46, 47 and 48 of the Complaint.

21. Answering Paragraph 49 of the Complaint, repeats and realleges each and every admission, denial and denial of knowledge or information, as if repeated and set forth at length herein.

22. Denies the allegations contained in paragraph 50 of the Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint.

24. Denies the allegations contained in paragraphs 52 and 53 of the Complaint.

25. Answering Paragraph 54 of the Complaint, repeats and realleges each and every admission, denial and denial of knowledge or information, as if repeated and set forth at length herein.

26. Denies the allegations contained in paragraphs 55, 56 and 57 of the Complaint.

27. Answering Paragraph 58 of the Complaint, repeats and realleges each and every admission, denial and denial of knowledge or information, as if repeated and set forth at length herein.

28. Denies the allegations contained in paragraph 59 of the Complaint.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint.

30. Denies the allegations contained in paragraphs 61 and 62 of the Complaint.

31. Answering Paragraph 63 of the Complaint, repeats and realleges each and every admission, denial and denial of knowledge or information, as if repeated and set forth at length herein.

32. Denies the allegations contained in paragraphs 64, 65 and 66 of the Complaint.

33. Answering Paragraph 67 of the Complaint, repeats and realleges each and every admission, denial and denial of knowledge or information, as if repeated and set forth at length herein.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 68 and 69 of the Complaint.

35. Denies the allegations contained in paragraphs 70, 71 and 72 of the Complaint.

36. Answering Paragraph 73 of the Complaint, repeats and realleges each and every admission, denial and denial of knowledge or information, as if repeated and set forth at length herein.

37. Denies the allegations contained in paragraphs 74, 75, 76 and 77 of the Complaint.

38. Answering Paragraph 78 of the Complaint, repeats and realleges each and every admission, denial and denial of knowledge or information, as if repeated and set forth at length herein.

39. Denies the allegations contained in paragraphs 79, 80 and 81 of the Complaint.

40. Answering Paragraph 82 of the Complaint, repeats and realleges each and every admission, denial and denial of knowledge or information, as if repeated and set forth at length herein.

41. Denies the allegations contained in paragraphs 83 and 84 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

42. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

43. The claims for relief alleged in the Complaint are barred by the applicable statute of limitations and/or laches.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

44. Defendant Tam has not been an owner, shareholder, officer or director of The Nice Restaurant, Inc. (hereinafter “NICE RESTAURANT”) since 1996.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

45. Defendant Tam is not an “employer” within the meaning of the Fair Labor Standards Act or the New York Labor Law and never had the power to hire and fire employees, establish their wages, set their work schedules or maintain their employment records at the NICE RESTAURANT.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

46. Defendant Tam never acted directly or indirectly in the interest of an employer in relation to Plaintiffs.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

47. Defendant Tam never acted as an employer in relation to Plaintiffs.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

48. Defendant Tam never exercised financial control, gave frequent instructions on conducting the business, never kept himself apprised of operations by receiving periodic reports from employees, referred individuals as potential employees, delegated and set rates for work assignments, instructed officers and managers about operations nor informed them of complaints about employees of the NICE RESTAURANT.

AS AND FOR A EIGHT AFFIRMATIVE DEFENSE

49. Defendant Tam never exercised managerial responsibilities or substantial control over the terms and conditions of the work of Plaintiffs.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

50. Defendant Tam was never involved in the day-to-day operations, nor had direct responsibility for the supervision of Plaintiffs, in the NICE RESTAURANT.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

51. The claims for relief alleged in the Complaint are barred by reason of Plaintiffs' unclean hands.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

52. The claims for relief alleged in the Complaint are barred by reason of waiver and/or estoppel.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

53. Plaintiffs are barred from maintaining the claims for relief alleged in the Complaint by reason of illegality.

WHEREFORE, Defendant Tam demands judgment against Plaintiffs (1) dismissing the Complaint with costs, disbursements and reasonable attorneys' fees and expenses, and (2) such other and further relief as to this Court seems just and proper.

Dated: New York, New York
July 31, 2007

KEATING & MCHUGH

By /s/ John F. Keating
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John F. Keating (JK5354)
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WILLIAM TAM sued herein as
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